
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AUTHER G. BARKLEY,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ON PETITION FOR REVIEW OF THE DECISION OF THE
TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

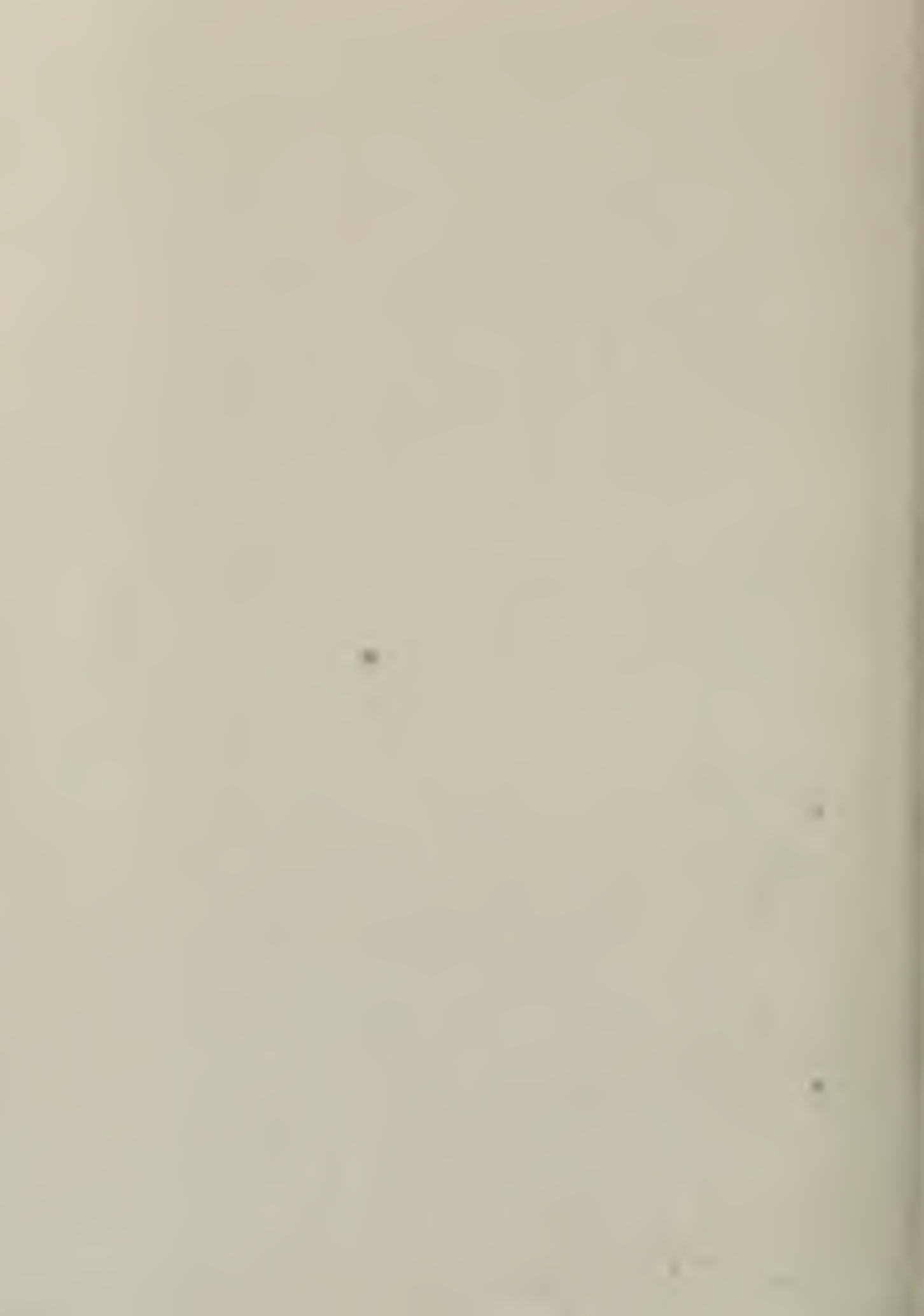
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In light of the evidence, or lack of evidence, presented to it, the Tax Court correctly sustained the Commissioner's determination of the taxpayer's income tax liability for the year in question. The taxpayer's allegations of injustices relating to his discharge from employment and denial of reinstatement are matters not within the jurisdiction of the Tax Court or this Court in this case -----

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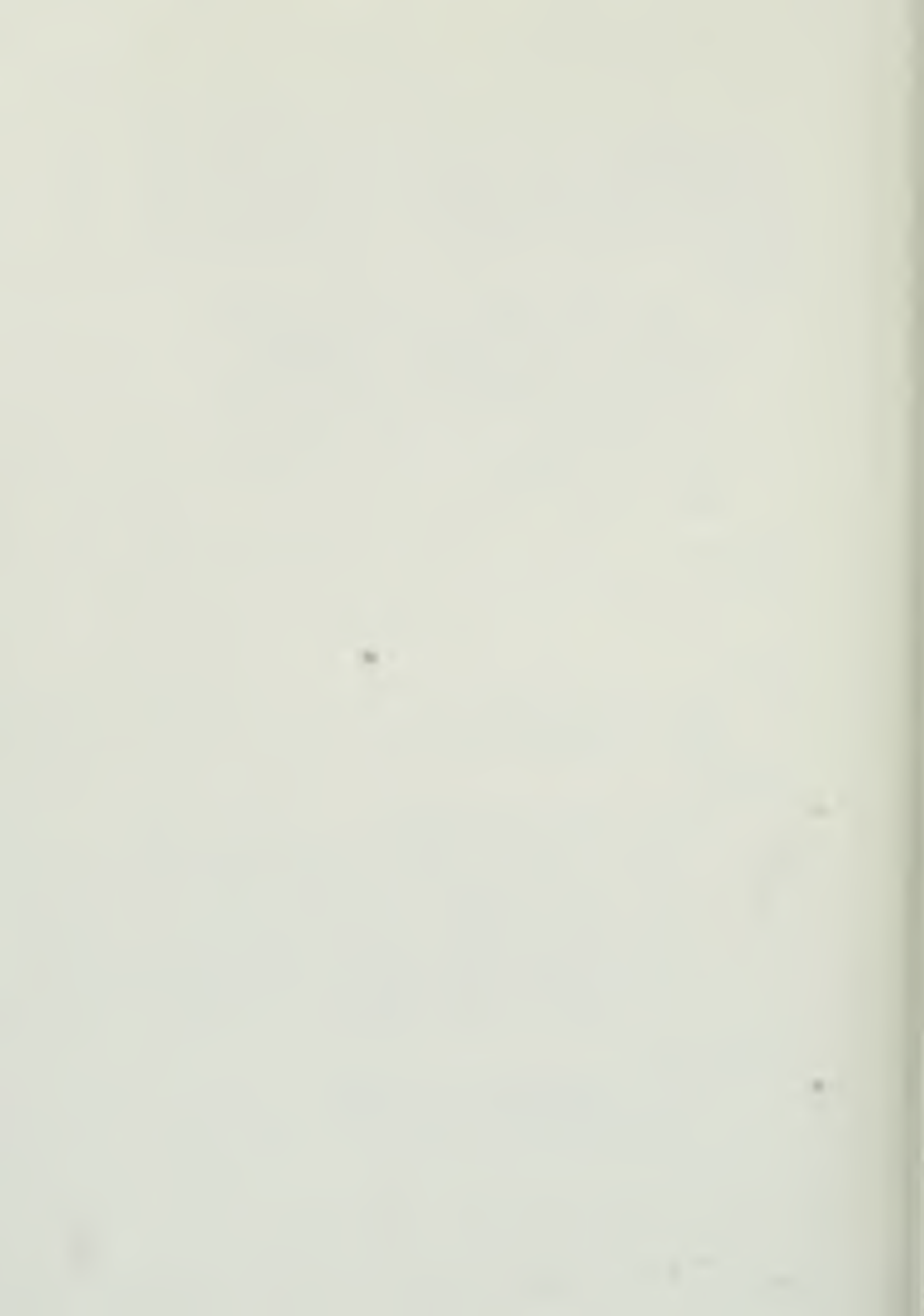
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OPINION BELOW

The memorandum findings of fact and opinion of the Tax Court
(I-R. 40-45)^{1/} are not officially reported.

JURISDICTION

This petition and amended petition for review (I-R. 47, 50) involve federal income tax for the taxable year 1964. On May 31, 1966, the Commissioner of Internal Revenue mailed to the taxpayer notice of a deficiency, asserting a deficiency in that tax in the aggregate amount of \$471,78, and a statutory addition to the tax of \$23.59 for negligence, under Section 6653(a) of the Internal Revenue Code of 1954. (I-R. 14-18.) Within ninety days thereafter,

^{1/} "I-R." and "II-R." references are to volumes I and II of the record on appeal.

on June 28, 1966, the taxpayer filed a petition with the Tax Court alleging certain injustices concerning his discharge from a position of employment. (I-R. 1-6.) On September 27, 1966, with leave of the Tax Court (I-R. 19), taxpayer filed an amended petition requesting a redetermination of the above deficiency (I-R. 13-18), permitted under the provisions of Section 6213 of the Internal Revenue Code of 1954. The decision of the Tax Court was entered May 15, 1967. (I-R. 46.) The case is brought to this Court by a petition and amended petition for review filed on June 8, 1967, and June 14, 1967, respectively (I-R. 47, 50), within the three-month period prescribed in Section 7483 of the Internal Revenue Code of 1954. Jurisdiction is conferred on this Court by Section 7482 of that Code.

QUESTION PRESENTED

Whether--upon the evidence, or lack of evidence, before it--the Tax Court was correct in sustaining the Commissioner's determination of the taxpayer's income tax liability for the year in question, where relief was sought by the taxpayer solely upon the basis of allegations of injustices relating to his discharge from employment and denial of reinstatement.

STATUTES AND REGULATIONS INVOLVED

The relevant statutes and Regulations are set forth in the Appendix, infra.

STATEMENT

The facts, as found by the Tax Court, are as follows:

Taxpayer and his wife Sue E. Barkley filed a joint individual income tax return for the calendar year 1964 with the District Director of Internal Revenue at Phoenix, Arizona. Both taxpayer and his wife at all times material herein were residents of Phoenix. (I-R. 41.)

On the joint return taxpayer and his wife reported total wages of \$5,470.91; itemized deductions of \$1,025.72; exemptions of \$2,400; a taxable income of \$2,045.19; and a tax liability of \$332.90. (I-R. 41.)

The Commissioner, in his notice of deficiency dated May 31, 1966, made "Adjustments" to the taxable income reported as follows (I-R. 41-42):

Taxable income as disclosed by return	\$2,045.19
Unallowable deductions and additional income:	
(a) Interest income	440.33
(b) Income for services rendered	1,530.00
(c) Itemized deductions	1,025.72
Total	<u>\$5,041.24</u>
Nontaxable income and additional deductions:	
(d) Standard deduction	744.12
Corrected taxable income	<u>\$4,297.12</u>

The \$1,530 added by the Commissioner was for services taxpayer rendered the M. and M. Distributors Company in 1964 which had not been reported by taxpayer on the return. (I-R. 42.) The Commissioner also determined that this amount represented "self-employment income as defined in Section 1402 of the Internal

Revenue Code of 1954" on which there was due a "self-employment tax" of \$65.26, his computation of tax being as follows (I-R. 42):

Corrected taxable income	\$4,297.12
Income tax	739.42
Plus self-employment tax	65.26
Total income tax liability	<u>\$ 804.68</u>
Tax liability shown on return	332.90
Deficiency	<u>\$ 471.78</u>
Addition under sec. 6653(a), I.R.C. 1954	23.59

On June 28, 1966, taxpayer filed a document with the Tax Court alleging that his Constitutional rights had been denied and requesting that his tax money be refunded until his rights have been enforced. The document also set forth in some detail certain facts which were alleged to have occurred in regard to a labor dispute. The document did not specifically challenge any of the determinations referred to in the Commissioner's notice of deficiency. (I-R. 42-43.)

On September 22, 1966, taxpayer, with leave of the Tax Court, duly filed an amended petition in which he set forth that the Commissioner erred in failing to refund his money and stated that the facts which are the basis of his case were set forth in the document filed earlier with the Tax Court on June 28, 1966. (I-R. 43.)

The Tax Court held that it had no power to adjudicate taxpayer's employment problems and that since taxpayer had offered no proof that the deficiency was in error, it had no alternative but to sustain the Commissioner's determination. (I-R. 43-45.) Taxpayer brings this petition for review.

SUMMARY OF ARGUMENT

In the Tax Court, taxpayer offered no proof relating to his tax liability. Evidence adduced by the Commissioner showed that taxpayer received but did not include in his return for the taxable year income in the form of compensation for services and interest. In addition, the unreported compensation was properly subject to the self-employment tax. In recomputing taxpayer's tax liability, the Commissioner allowed taxpayer the standard deduction, because it was greater than taxpayer's itemized deductions after the latter were reduced by the amount of reported but unsubstantiated charitable deduction. Imposition of the 5 percent addition to the tax deficiency for negligence or intentional disregard of rules and regulations was appropriate in view of taxpayer's avowed refusal to fulfill his tax obligations. The basis for this refusal, which is taxpayer's only contention in this case, is that he suffered alleged injustices arising from a labor dispute.

This contention is not, of course, a matter within the jurisdiction of the Tax Court or this Court in this proceeding. The Tax Court's function is limited by statute to a redetermination of the tax deficiency under the applicable tax laws. This Court's jurisdiction on a petition for review from the Tax Court is likewise restricted by statute to a determination of whether the decision of the Tax Court is "in accordance with law"--the internal revenue laws, and such other laws or principles as may be indirectly applicable. The Tax Court's decision here is a correct application of the internal revenue laws and should accordingly be affirmed.

ARGUMENT

IN LIGHT OF THE EVIDENCE, OR LACK OF EVIDENCE, PRESENTED TO IT, THE TAX COURT CORRECTLY SUSTAINED THE COMMISSIONER'S DETERMINATION OF THE TAXPAYER'S INCOME TAX LIABILITY FOR THE YEAR IN QUESTION. THE TAXPAYER'S ALLEGATIONS OF INJUSTICES RELATING TO HIS DISCHARGE FROM EMPLOYMENT AND DENIAL OF REINSTATEMENT ARE MATTERS NOT WITHIN THE JURISDICTION OF THE TAX COURT OR THIS COURT IN THIS CASE

In the Tax Court, taxpayer did not introduce any evidence or argument addressed to the adequacy of the factual or legal foundation for the Commissioner's determination of tax deficiency. The only proof directly relating to taxpayer's liability was submitted by the Commissioner. (I-R. 24-30, II-R. 11.) Thus, while the taxpayer's failure to bring forth relevant proof left the presumptive correctness of the tax deficiency intact (see Welch v. Helvering, 290 U.S. 111 (1933)), the evidence adduced by the Commissioner in the Tax Court, when subsumed under the applicable statutes, nonetheless provides alternative support for the Commissioner's determination. Moreover, since taxpayer's tax liability is relatively uncomplicated and since he does not refute his liability in terms of the tax statutes, the basis for the Commissioner's determination need be discussed only briefly.

During the taxable year, taxpayer received but did not report on his tax return \$1,530 in compensation for services. This income item was included as an adjustment to taxpayer's tax liability in the statutory deficiency notice. (I-R. 16.) The receipt of this compensation was not denied by taxpayer in his testimony. (II-R. 22-23.) Another item of income not included on his tax

return was interest received by taxpayer on various savings accounts. (I-R. 16.) Statements verifying the payment of interest to taxpayer (Forms 1099) were enclosed with his tax return (I-R. 28-30), and taxpayer at one point admitted the receipt of this interest (II-R. 17). These items of compensation and interest are, of course, income subject to taxation. Section 61(a)(1) and (4), Internal Revenue Code of 1954, Appendix, infra. In addition, since no tax was withheld on the above unreported compensation (II-R. 23), it was properly subject to the self-employment tax (I-R. 18) imposed by Sections 1401 and 1402(a), Internal Revenue Code of 1954, Appendix, infra.

In recomputing the tax liability, the Commissioner allowed taxpayer the standard statutory deduction because it was greater than taxpayer's itemized deductions after the latter were reduced by the amount of reported but admittedly unsubstantiated charitable contributions. (I-R. 16-17, II-R. 24-25.) See Section 170(a)(1), Internal Revenue Code of 1954, and Treasury Regulations on Income Tax, Section 1.170(a)(3)(iii), Appendix, infra.

Finally, the 5 percent addition to the tax deficiency for negligence or intentional disregard of rules and Regulations under Section 6653(a), Internal Revenue Code of 1954, Appendix, infra, was entirely appropriate in view of the statement which accompanied taxpayer's return embodying his clear refusal to fulfill his tax obligations. (I-R. 33-38.) The statement asserts as the basis for the

refusal a series of wrongs taxpayer is alleged to have suffered relating to his previous employment. Throughout the Tax Court proceeding, taxpayer took the same position, adding that the labor dispute resulted in the denial of his constitutional rights and that until these alleged injustices were cured, all taxes paid by him since July 6, 196²3, should be refunded. (I-R. 37-38.)

Taxpayer's position culminates in this appeal with several large claims for relief from various named parties. (Br. 1-7.)

Of course, the Tax Court is not the proper forum for airing grievances of the kind raised by taxpayer's repeated allegations. Sections 6214(a) and 7442, Internal Revenue Code of 1954, Appendix, infra, limited the Tax Court's jurisdiction in this case to a re-determination under the Internal Revenue Code of the tax deficiency, and, due to taxpayer's unusual stance, that redetermination could only be perfunctory. Cf. Muste v. Commissioner, 35 T.C. 913 (1961). Apparently appreciating the sincerity of taxpayer's grievances, the Tax Court did attempt to explain its restricted function to the taxpayer. (II-R. 17-18.)

The jurisdiction of this Court on a petition for review from the Tax Court is likewise limited by statute to a determination of whether the Tax Court's decision was "in accordance with law"

²/ This is the day taxpayer was apparently discharged from his employment, the root of his grievances. (I-R. 33.)

(Section 7482(c), Internal Revenue Code of 1954; see also Section 7482(a) Appendix, infra)--the internal revenue laws, and such other laws or legal principles as may be indirectly applicable. In un-technical terms, taxpayer has chosen the wrong time and place to present his labor problems. The Tax Court's decision is a correct application of the internal revenue law and should accordingly be affirmed.

CONSLUSION

For the reasons above, the decision of the Tax Court should be affirmed.

Respectfully submitted,

MITCHELL ROGOVIN,
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MEYER ROTHWACKS,
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January, 1968.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: _____ day of _____, 1968.

HARRY MARSELLI
Attorney

APPENDIX

Internal Revenue Code of 1954:

SEC. 61. GROSS INCOME DEFINED.

(a) General Definition.--Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;

* * *

(4) Interest;

* * *

(26 U.S.C. 1964 ed., Sec. 61.)

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) Allowance of Deduction.--

(1) General Rule.--There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * *

(26 U.S.C. 1964 ed., Sec. 170.)

SEC. 1401 [as amended by Sec. 201(a), Social Security Amendments of 1961, P. L. 87-64, 75 Stat. 131]. RATE OF TAX.

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax * * *

* * *

(26 U.S.C. 1964 ed., Sec. 1401.)

SEC. 1402. DEFINITIONS.

(a) Net Earnings From Self-Employment.--The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, * * *

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(26 U.S.C. 1964 ed., Sec. 1402.)

SEC. 6214. DETERMINATIONS BY TAX COURT.

(a) Jurisdiction as to Increase of Deficiency, Additional Amounts, or Additions to the Tax.--The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, * * *

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(26 U.S.C. 1964 ed., Sec. 6214.)

SEC. 6653. FAILURE TO PAY TAX.

(a) Negligence or Intentional Disregard of Rules and Regulations With Respect to Income or Gift Taxes.--If any part of any underpayment (as defined in subsection (c) (1)) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

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(26 U.S.C. 1964 ed., Sec. 6653.)

SEC. 7442. JURISDICTION.

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926.

(26 U.S.C. 1964 ed., Sec. 7442.)

SEC. 7482. COURTS OF REVIEW.

(a) Jurisdiction.--The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

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(c) Powers.--

(1) To Affirm, Modify, or Reverse.--Upon such review, courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) To Make Rules.--Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2074 of title 28 of the United States Code. Until such rules become effective the rules adopted under authority of section 1141 (c) (2) of the Internal Revenue Code of 1939 shall remain in effect.

(3) To Require Additional Security.--Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) To Impose Damages.--The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the petition was filed merely for delay.

(26 U.S.C. 1964 ed., Sec. 7482.)

Treasury Regulations on Income Tax (1954 Code):

§ 1.170-1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) In general--(1) General rule. Any charitable contribution (as defined in section 170(c)) actually paid during the taxable year is allowable as a deduction in computing taxable income, regardless of the method of accounting employed or when pledged. In addition, contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year (see § 1.170-3), and subject to the provisions of section 170(b) (5) and paragraph (g) of § 1.170-2, certain excess charitable contributions made by individuals in taxable years beginning after December 31, 1963, shall be treated as paid in certain succeeding taxable years. The deduction is subject to the limitations of section 170(b) (see §§ 1.170-2 and 1.170-3) and is subject to verification by the district director. For rules relating to the determination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer's household and treated under section 170(d) as paid for the use of an organization described in section 170(c) (2), (3), or (4), see paragraph (f) of § 1.170-2. For a special rule relating to the computation of the amount of the deduction with respect to a contribution of section 1245 or section 1250 property, see section 170(e).

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(3) Information required in support of deductions for taxable years beginning after December 31, 1963--(1) In general. In connection with claims for deductions for charitable contributions paid in taxable years beginning after December 31, 1963, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed (for example, used clothing, paintings, securities) and shall state the method utilized in determining the fair market value of the property at the time the contribution was made. In any case in which a taxpayer makes numerous cash contributions to an organization during the taxable year, the taxpayer may state the total cash payments made to such organization during the taxable year in lieu of listing each cash contribution and the date of payment.

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(iii) Statement from donee organization. Any deduction for a charitable contribution must be substantiated, when required by the district director, by a statement from the organization to which the contribution was made indicating whether the organization is a domestic organization, the name and address of the contributor, the amount of the contribution, the date of actual receipt of the contribution, and such other information as the district director may deem necessary. If the contribution includes an item of property (other than money or securities which are regularly traded on a stock exchange or in an over-the-counter market) which the donee deems to have a fair market value in excess of \$200 at the time of receipt, such statement shall also indicate for each such item its location if retained by the organization, the amount received by the organization on any sale of the property and the date of sale, or in case of other disposition of the property, the method of disposition.

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(26 C.F.R., Sec. 1.170-1.)